IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: PA/00043/2020

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On 28 September & 4 November 2022	**On the 06 December 2022**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

HN (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Keith Gayle, in-house counsel at Elder Rahimi Solicitors
For the Respondent: Stephen Whitwell, Senior Presenting Officer

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is an Iraqi national who was born on 30 June 1992. He left Iraq in 2015 and travelled initially to Norway, where he was ultimately refused asylum in

2018. He then travelled to the United Kingdom clandestinely, concealed within a lorry, in March 2018 and he was served with illegal entry papers on 22 March 2018. He formally claimed asylum on 19 April 2018.

2. The appellant underwent a screening interview when he claimed asylum. He underwent a substantive asylum interview six months later, in October 2019. He has been represented throughout by Elder Rahimi Solicitors, and that firm made representations, of their own volition and in response to queries from the Secretary of State in October, November and December 2019.

3. The claim which was given at that stage may be summarised relatively shortly. The appellant stated that he was a Kurdish man of the Kakai faith from Wardak, near Mosul in the governorate of Ninevah. In March 2013, he had been attacked by a group of men from the Harke tribe and they had shaved his moustache. His area had then been taken over by ISIS in August 2014. His father had decided that he should leave due to the presence of ISIS and their hostility towards ethnic and religious minorities. His father had paid an agent, who had taken him to Norway. When his claim had been refused by the Norwegain authorities, he had left there by train and had travelled to the UK. He feared ISIS, the Harke tribe and the Popular Mobilisation Forces ("PMF") upon return to Iraq. He was unable to relocate to the Independent Kurdish Region ("IKR") because his father had been a member of the Ba'ath Party.

4. The appellant's claim was refused by the Secretary of State on 19 December 2019. She accepted that he was a Kurdish Iraqi of the Kakai faith and that he was from Wardak. She accepted that he had faced a random attack in 2013 but not that his father was a member of the Ba'ath Party. The respondent did not accept that the appellant would be at risk on return to Iraq because ISIS had been driven out of the area and there was no risk from the PMF or the Harke. The respondent concluded that there were ways in which the appellant could obtain civil status documentation which would enable him to travel to his home area and to live there.

5. The appellant appealed. His appeal was allowed by Judge Bowler, but only on one basis. The judge concluded that the appellant – as a Kakai – would be unable to obtain a CSID document. The respondent appealed against that decision, contending that the judge had acted procedurally unfairly, in that the basis upon which she had allowed the appeal had not been ventilated at the hearing. Permission to appeal was granted by Upper Tribunal Martin. I considered the respondent's appeal and concluded that the grounds of appeal were made out because the appellant had never advanced a case that he would be unable as a Kakai to obtain a replacement CSID or other identity document. On consideration of all that was before the judge, including her detailed Record of Proceedings, it was clear to me that the point had been taken of the judge's own volition and that the respondent had not had an opportunity to address her on the determinative point in the appeal. I therefore set aside the decision of the FtT in part, and ordered that the decision on the appeal would be remade in the Upper Tribunal.

6. Given the absence of any complaint about the judge's primary findings of fact, I preserved the findings of fact which I had summarised in the following way, at [5]-[7] of my first decision:

> [5] The judge heard oral evidence from the appellant and submissions from counsel on both sides. She set out the entire

headnote of SMO, KSP and IM (Iraq) CG [2019] UKUT 400 (IAC). At [26]-[30], the judge made the following findings of fact. She considered that the appellant had given a generally credible account and she was not persuaded that his failure to claim asylum en route to the UK detracted from his credibility. She accepted that his father had been a member of the Ba'ath Party and that he came from Wardak in Ninewah. It was not in dispute that he was Kurdish and a Sorani speaker and that he had not formerly lived in the IKR. It was also accepted on all sides that Ninewah was a Formerly Contested Area and that the appellant was a member of the Kakai faith. The judge found that the appellant had not established (because he did not know) his father's role in the Ba'ath Party. She accepted that the appellant's two brothers had been taken by ISIL and he did not know what had happened to them. He had not been able to contact his parents or his brothers since leaving Iraq and his one paternal uncle had died and he had no other family in Iraq.

[6] In assessing the appellant's eligibility for international protection, the judge concluded that the Refugee Convention could not avail him: [32]-[41]. He had only encountered one problem in Wardak in 2013 and there was no evidence of a threat to him after that. Whilst there was some evidence of ISIL activity in his home area, the evidence was insufficient to establish an extant threat of persecution there. The threat from Has Al Shabi was too vague to establish a risk to the appellant. Any threat on account of his father's membership of the Ba'ath Party was in the IKR only.

[7] At [42]-[52], the judge considered the appellant's eligibility for Humanitarian Protection, under Article 15(c) of the Qualification Directive. She recalled the relevant factors from SMO & Ors and she noted that many of the enhanced risk factors did not apply to him. She accepted, however, that he had destroyed his CSID en route to the UK. She had also accepted that he had no contact with his family in Iraq but she considered, in light of SMO & Ors, that he was likely to recall the volume and page reference in the Family Book. She considered that he was unwilling, rather than unable, to obtain a new identity document.

Procedural Background

7. I issued my first decision in this appeal as long ago as 18 September 2020. The Principal Resident Judge subsequently made a Transfer Order and the appeal came before Upper Tribunal Judge Keith for case management hearings on three occasions (26 January 2021, 3 May 2022 and 28 June 2022). Directions were given at those hearings, particularly with a view to progressing consideration of two issues: (i) whether the appellant might obtain a Civil Status identity document before his return to Iraq or within a reasonable time thereafter and (ii) whether the appellant should be entitled to raise his sur place political activities in the resumed hearing.

8. There was an abortive hearing before me and Deputy Upper Tribunal Judge Manuell on 19 August 2022. That hearing was listed remotely, at short notice, as a result of a train strike which caused transport difficulties for the advocates. It was accepted by the respondent's representative at that hearing (Mr Clarke, a Senior Presenting Officer) that the appellant was entitled to raise the new matter

of his sur place activities. Despite the intention to limit the scope of the resumed hearing, we were satisfied that the Upper Tribunal retains a broad discretion in respect of such matters and that it was appropriate to allow the point to be considered, in circumstances in which both parties were content for that to occur.

9. We began to hear from the appellant, who adopted his statements and was partially cross-examined by Mr Clarke. When he came to be referred to pages in the bundle about his sur place activity, however, we encountered intractable difficulties. The appellant had not been provided with a copy of the bundle and there was no feasible way in which he could give evidence remotely whilst at the same time considering the bundle. The hearing was adjourned so that it could be listed face-to-face, as had originally been intended.

10. At the start of the hearing before me on 28 September 2022, it was agreed that the hearing would start afresh. The advocates were content to take that course due to the absence of Judge Manuell, the change of representative for the respondent, and the difficulties encountered during the hearing in August. I heard extensive evidence from the appellant before the hearing was adjourned part-heard, by agreement, when it transpired that the appellant had sent potentially significant material to Mr Gayle but that material had not been filed or served as a result of an error.

11. The hearing therefore resumed before me on 4 November 2022, by which stage the appellant had filed and served the additional material. I should record that at this stage of my decision that Mr Whitwell accepted during his submissions that the first of the issues I have set out at [7] above fell to be resolved in favour of the appellant. He accepted that there was no proper basis upon which he could submit that the appellant could obtain a civil status document (whether CSID or INID) before his return to Iraq or within a reasonable time thereafter, and he could not oppose the appellant's appeal being allowed on Article 3 ECHR grounds as a result.

12. That concession was properly made in light of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC). The appellant has no CSID or INID. He is from Ninevah and is registered there. There is no reason to think that Ninevah has not adopted the INID system. The appellant cannot obtain a CSID, therefore, and would be required to enrol his biometrics personally, in Ninevah, in order to obtain an INID. He will not be able to travel to Ninevah from Baghdad (to which Mr Whitwell confirmed he would be returned) without a CSID or INID. In Baghdad, without a CSID or INID, he would be at risk of conditions contrary to Article 3 ECHR. In light of all of these facts, the reality is that Mr Whitwell could not submit that the appellant's return to Baghdad would be in compliance with section 6 of the Human Rights Act, and he was right to recognise that.

13. Given Mr Whitwell's concession and the preservation of the findings made by the FtT about the absence of risk to the appellant when he left Iraq, I shall focus in the remainder of this decision on the only remaining issue: the appellant's sur place activities and the risk arising therefrom.

The Appellant's Sur Place Claim

14. The appellant made no mention of sur place activities in his interviews with the respondent or in the representations which were made on his behalf by his

solicitors. Nor was there any mention of any such activities in the witness statement he made for the purpose of his appeal before the FtT.

15. The appellant made a statement in connection with the appeal in the Upper Tribunal on 27 April 2022. He described his sur place activities in that statement. He stated that he had participated in a number of demonstrations outside the Iraqi Embassy in London in order to highlight the corruption of the regimes in Iraq and the IKR. He stated that he had attended a demonstration at Chatham House at which people had thrown eggs at the Prime Minister of the IKR, Mr Barzani. There had been a great deal of media coverage of the event. The appellant had also been very active on Facebook. Photographs of the appellant participating in these events was provided at pp18-24 of the appellant's consolidated hearing bundle. Further evidence of sur place activities was provided by email, without a further or amended index, on 17 August, 26-27 September and then on 6 October, following the part-heard adjournment of the resumed hearing.

16. At the outset of the hearing in September, it was agreed by Mr Whitwell and Mr Gayle that the video recording on which the appellant relied showed him in physical proximity of the protest at which Mr Barzani was 'egged'. I then heard extensive oral evidence from the appellant. Neither advocate sought to ask him further questions at the more recent hearing. I do not propose to rehearse the appellant's oral evidence. There is a digital record of that evidence, in addition to my own detailed notes of it, and I shall refer to what was said insofar it is necessary to do so to explain my findings of fact.

Submissions

17. Mr Whitwell made reference to the reasons for refusal letter but he recognised that it was 'of some vintage', given the developments in the case-law and in the case advanced by the appellant. He noted that there were preserved findings which were all but determinative of the claim under the Refugee Convention but he noted that the sur place activity and the risk arising therefrom were to be considered.

18. Mr Whitwell submitted that the sur place activities had been undertaken belatedly and in bad faith in an attempt to rekindle a protection claim which had essentially failed. The appellant had undertaken no sur place activity in Norway, or for the first four years of his time in the UK. The appellant had taken steps to make himself more prominent in the photographs which had been taken, by wearing a high visibility jacket, for example, when the wearing of that jacket had no particular purpose. The appellant had initially suggested that people had taken photographs of him but he had subsequently admitted that these were merely photographs he had found on the internet. Some assistance was to be found in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). It was clear that the appellant had no profile and that what he really wanted to do was to generate one by his actions. On the totality of the material adduced, the appellant was unlikely to be of any interest to the Iraqi authorities.

19. Mr Whitwell noted the suggestion, made during the September hearing and said to be supported by recently adduced material, that the appellant had been threatened directly by a member of the PMF. The evidence did not show that the individual was from the PMF, however, and there was no reason to think that any threat from him was a threat from the PMF more generally. There was no evidence to show that the authorities in Baghdad had any interest in those who undertook sur place activity. (Mr Gayle reminded me, however, of what was said

on this subject in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), at [5] of the headnote in particular.)

20. Mr Whitwell then began to make submissions about the feasibility of the appellant obtaining a replacement civil status document but he ultimately accepted that there was no way in which he could do so, as I have already recorded above.

21. For the appellant, Mr Gayle submitted that the appellant had adduced compelling evidence of anti-regime activities. Those activities were not confined to the occasion when he was wearing a high visibility jacket. He had been in the vicinity when eggs were thrown at the Prime Minister of the IKR. He had received threats as a result of his actions. The appellant was what had been described in BA (Iran) as an active participant in the demonstrations. It was clear that these actions had attracted the attention of the regime, and that the demonstrators had been photographed by pro-regime operatives. The appellant's activities were against the Kurdish government and the Iraqi government proper. The threat from a member of the PMF was real and concerning. The appellant had been very active on Facebook and had provided an activity log in compliance with what had been said in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC). He would clearly have a profile in the event that he returned. The appellant's sur place activity was a facet of his overall risk profile and his Kakai faith remained relevant. It was clear that the Kakai continued to be targeted. Nor was it possible to overlook the appellant's motivation for his supr place activity, which was likely to be informed by his disgust at the treatment of the Kakai in Iraq. There were references which tended to show that the appellant was not the sort of person who would engage in sur place activity merely to bolster an asylum claim.

22. Mr Gayle attempted to address me on the appellant's ability to obtain civil status identity documentation but I indicated that I did not need to hear from him on that question, given Mr Whitwell's realistic stance on behalf of the respondent.

23. I reserved my decision at the end of the submissions.

Analysis

24. Having had the benefit of considering the appellant's oral evidence during a comparatively lengthy hearing in September, and having considered all of the documentary evidence before me, I come to the clear conclusion that his sur place activity was not motivated by anything other than a desire to secure asylum.

25. The appellant was apolitical in Norway and during his first three years in the United Kingdom. He gave no indication during the hearing of the reason why he had suddenly decided to attend demonstrations and publish anti-government material on Facebook. It was put to him squarely by Mr Whitwell that he had no commitment to any particular cause and his response was merely to disagree.

26. The appellant made vague references during his evidence to the government ill-treating civilians and to the current Prime Minister of the KRG being 'really bad' but articulated nothing more by way of political belief. He has not joined or affiliated himself to any named political organisation.

27. There are numerous references for the appellant in the consolidated bundle, many of whom speak about meeting him in a support group called Refugee Tales and spending extended periods of time with him. Those individuals speak highly of the appellant but the signal feature of all of those references, many of which are quite long and from highly educated people, is that not one of them speaks about the appellant's protesting activities in the UK, or his interest in demonstrating against the government. The reality, as Mr Whitwell put to the appellant, is that he has taken to Facebook and attended these demonstrations purely in order to shore up his protection claim, which sustained two serious blows when it was largely rejected by Judge Bowler whose adverse findings were preserved in my first decision.

28. In answering the question posed by Article 4(3)(d) of the Qualification Directive, therefore, I come to the conclusion that the appellant's recent sur place activities were engaged in for the sole purpose of creating the necessary conditions for applying for international protection. In itself, however, that is no answer to the appellant's sur place claim; it is merely a part of the wider consideration of whether the appellant's activities are reasonably likely to expose him to persecution on return to Iraq.

29. The conclusion that the appellant's sur place activities were undertaken entirely in bad faith does enable me to resolve one aspect of his claim quite shortly, however. Insofar as it is contended that he is a committed activist who would either continue his activities in Iraq or would be required, contrary to the Refugee Convention, to silence his opinions, I find that there is no such commitment and no such risk. I do not consider the appellant to have any interest whatsoever in anti-regime activity and I do not consider it reasonably likely that he would wish to undertake any such activity in Iraq. He would have no reason to do so, since his only goal in the UK has been to secure the status which he was unable to secure in Norway.

30. Nevertheless, it is clear that the appellant has attended some demonstrations in the UK. The papers give no clear idea of the number of such demonstrations, although there are appear to be more than two. One is said to have taken place in early 2021. There was the one at Chatham House in April this year, in which the Prime Minister of the KRG was pelted with eggs. Judging by the photographs in the consolidated and supplementary bundles, there have been others. It is clear that the appellant has on occasion held banners and sheets of paper with slogans which are critical of the regime. He has stood in proximity to others holding similar placards. And he was recorded in proximity to other protesters who were throwing eggs at Mr Barzani earlier this year.

31. It is equally clear that the appellant has posted material on his Facebook account which is critical of the governments of Iraq and the IKR. Most of the posts in the consolidated bundle are not in English and are not translated but I note, for example, that the appellant 'shared a memory' in May 2022 of a 'Demonstration against Iraqi and Kurdish Rjeme [sic]'. On 9 August 2022, he made reference on Facebook to 'the corrupt government and the mafia'. He has shared content which refers, for example, to the governor of Kirkuk as a chauvinist and a thief.

32. The appellant is accepted by Mr Whitwell to have something in the region of 5000 friends or followers on Facebook. I did not see that number for myself; it was agreed by the advocates at the first hearing after the appellant logged into his Facebook account.

33. I accept that the appellant has been sent threatening messages as a result of the material he has posted on Facebook. A man who 'Lives in Irbil, Iraq' threatened the appellant that the day would come 'when we arrest you'. Another man sent him a message which stated, amongst other things, that there was 'no place for a dog like you in Kurdistan'. These messages are translated in the consolidated bundle.

34. The messages which caused the September hearing to be adjourned are in the supplementary bundle. There is an exchange with a gentleman called Mr Shabk. I need not reproduce the whole conversation, but I note that it includes reference to the PMF being like a crown on the appellant's head and to Mr Shabk intending to kill the appellant after greeting him at the airport on his return. The significance of these messages is said to be that Mr Shabk is a member of the PMF and I note that there is a profile picture of him holding a rifle wearing body armour. The logo of the PMF appears on his profile in Facebook.

35. I evaluate the risk to the appellant from his sur place activities in light of these messages but also in light of the background material which is before me, all of which I have considered. That material shows that the government of the IKR is sensitive to criticism and that the same might be said, albeit to a lesser extent, of the Iraqi government. The following short excerpts from the most recent US Department of State Human Rights Report, as reproduced in the appellant's bundle, suffice to summarise the climate:

> The country experienced large-scale protests in Baghdad and several Shia-majority provinces that began in 2019 and lasted through mid-2020. Sporadic protests continued during the year amid a continued campaign of targeted violence against activists. According to the Iraqi High Commission for Human Rights (IHCHR), 591 protesters were killed from October 2019 until the end of May. For the same period, the IHCHR stated 54 protesters were still missing and that there were 86 attempted killings of activists, 35 of which were carried out successfully.
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> […]
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> The government did not consider any incarcerated persons to be political prisoners and argued they had violated criminal statutes. It was difficult to assess these claims due to lack of government transparency, prevalence of corruption in arrest procedures, slow case processing, and extremely limited access to detainees, especially those held in counterterrorism, intelligence, and military facilities. Political opponents of the government alleged the government imprisoned individuals for political activities or beliefs under the pretense of criminal charges ranging from corruption to terrorism and murder. Prime Minister al-Kadhimi ordered the immediate release of all detained protesters in May 2020, and the Higher Judicial Council ordered courts to comply.
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> […]
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> Individuals were able to criticize the government publicly or privately but not without fear of reprisal. Paramilitary militias harassed activists and new reform-oriented political movements online and in person, including through online disinformation, bot attacks, and threats or use of physical violence to silence them and halt their activities.

> Iraqi Security Forces (mostly those under the Ministry of Interior, within the NSS, or from the PMF), in addition to KRG forces (primarily Asayish), arrested and detained protesters and activists critical of the central government and of the KRG, respectively, according to statements by government officials, NGO representatives, and press reports.
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> […]
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> Civil society organizations reported their activists' social media pages were monitored by government and militia forces, and that the activists faced harassment or criminal charges filed against them based on what they posted on Facebook and other social media platforms. For example on November 16, the Kirkuk Province misdemeanor court charged Hazhar Kakai, a lawyer and a human rights advocate, 510,000 dinars ($350) for a Facebook post allegedly describing the acting governor of Kirkuk Rakan al-Jabouri as a Baathist.

36. With that climate in mind, I turn to consider the nature of the risk which faces the appellant on return to Iraq. I recall in that connection what was said by Sedley LJ (with whom Wilson and Tuckey LJJ agreed) at [16]-[18] of YB (Eritrea) v SSHD [2008] EWCA Civ 360. Both advocates also referred me to what was said by a senior constitution of the Upper Tribunal in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC). The risk arising in Iranian cases is of a different character, however. As was recognised in BA (Iran) and in subsequent country guidance decisions, Iran is a country in which an individual is likely to be questioned closely on return about their political activity in the UK. That process at the airport includes scrutiny of an individual's social media accounts. There is no evidence of any such enquiries in the material before me.

37. In this case, the suggestion is instead that the appellant's physical and online activities have already come to the attention of individuals such as Mr Shabk and that it is reasonably likely that he would be targeted by the government itself, the PMF, or private citizens who are aligned with the ruling elite in Iraq or the IKR.

38. I do not consider there to be a reasonable degree of likelihood of any such threat materialising. The appellant has been threatened on a couple of occasions by two individuals acting in their private capacity. Steps have therefore been taken to silence the appellant online, in the way described in one of the excerpts I have reproduced above. It is a sad fact of modern life that such threats are easily and commonly made online. What I must consider, however, is whether the PMF or any individual would take the next step, of locating the appellant and subjecting him to persecutory ill-treatment because of his actions in the UK. I emphasise the words "in the UK" because it is inconceivable that the appellant would have any interest in continuing these activities in the event that he returned to Iraq.

39. The appellant had no profile when he was in Iraq. He had no profile in Norway. He had no profile in the UK until recently. Anyone considering his physical or online activities will see that it has been short-lived and characterised by a lack of affiliation to any particular party or cause and rather peripheral involvement in ill-focussed protest activity. Drawing on what was said by the Upper Tribunal in BA (Iran), the appellant is simply not the sort of person which the Iraqi regime would give any priority to tracing. I bear in mind that one of the protests involved eggs being hurled at the Prime Minister, and that this attracted a certain amount of media attention, but the appellant was not a leader or an organiser at this, or any other, event.

40. Although the appellant stated that the demonstrators had been filmed, and produced what appeared to be photographs of people taking photographs, I consider there to be no real risk of him being identified. There is nothing before me to show that the regime has the capacity to identify individuals, or indeed that it would have any interest in combing through footage of such protests in order to identify every rank and file member of the large crowd. The Government of Iraq is simply not as hyper-sensitive as the Iranian (or, for that matter, the Eritrean) government.

41. There is, in my judgment, no reason whatsoever to think that the appellant would encounter difficulty at Baghdad International Airport as a result of what he has done in the UK. There is simply no evidence of screening of the kind that occurs in Iran and there is no reason, in any event, to think that a person with a short-lived and insignificant profile such as the appellant's would be of any interest to the regime. There is nothing to show that the specific interest shown in the appellant by Mr Shabk or the other gentleman is shared by others, or that it is anything other than an idle threat typed quickly on a mobile phone. It is clear that it is not every activist who criticises the government who is at risk; a certain profile is clearly required, and I do not consider that this appellant will have anything like the type of profile which would be reasonably likely to cause him to experience persecution after entering Iraq.

42. In the circumstances, I do not accept that the appellant would be at risk on return to Iraq as a result of his sur place activities alone. I was invited by Mr Gayle to consider the appellant's profile as a whole to decide whether his return would be contrary to the Refugee Convention. I have done so, reflecting particularly on his ethnicity, his faith and his father's link to the Ba'ath Party. I have taken account of the guidance given in SMO, KSP and IM (Iraq) and SMO & KSP [2022] UKUT 110 (IAC), although I do not intend to set that out in this decision. I note that there is some concern expressed in the background material about the treatment of the Kakai religious minority. I also remind myself that the Kurds are a minority in government-controlled Iraq. The judge in the FtT concluded, however, that these matters would not expose the appellant to a risk of persecutory ill-treatment on return to Iraq and I do not consider that these factors add anything to the sur place claim advanced by the appellant. He would not, in my judgment, be at risk on account of these factors, whether individually or cumulatively.

43. I therefore dismiss the claim under the Refugee Convention. For like reasons, and having considered the list of factors at [5] of the headnote to SMO II, I do not consider that the appellant would be at risk of treatment contrary to Article 15(c) of the Qualification Directive upon return to Baghdad. Since the appellant will not be exposed to intentional ill-treatment on return to Iraq, he cannot meet the test in Article 15(b): NM (Art 15(b): intention requirement) Iraq [2021] UKUT 259 (IAC) refers. As a result of Mr Whitwell's perfectly proper acceptance that there is no way in which the appellant could realistically obtain acceptable civil status documentation in Baghdad or before his return there, however, the appeal is allowed on Article 3 ECHR grounds. That conclusion renders it unnecessary to consider Article 8 ECHR, whether inside or outside the Immigration Rules.

Notice of Decision

The FtT made an error of law and its decision has been set aside. I remake the decision on the appeal by dismissing it on Refugee Convention and Humanitarian

Protection grounds but allowing it on the basis that the appellant's return to Iraq would be unlawful under section 6 of the Human Rights Act 1998.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 November 2022